IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8824 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BABUBHAI BACHUBHAI KORADIYA & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR HARSHIT S TOLIA for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 2,
MR M.IQBAL A SHAIKH for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/10/2007

ORAL JUDGMENT

1. In the present application, the applicants original accused have prayed for quashing of a

criminal complaint bearing C.R. NO.II-17/2004 dated 8.9.2004 filed before Vadiya police station.

2. The allegations in the complaint are to the effect that the accused persons on 9.8.2004 had abused the women relatives of the complainant and had made remarks about their community stating that they belong to Schedule Caste and they have therefore, gone out of hand.

3. On behalf of the applicants, it is sought to be suggested that the incident as alleged had never taken place. In fact, the complainant himself is a head strong person and the applicants who are office bearers of the village panchayat had tried to prevent the complainant from carrying out illegal activities on account of which malicious complaint came to be filed. It is further contended that he himself is a member of Schedule caste community and that therefore, no complaint for commission of offnece under Schedule Caste and Schedule Tribe(Prevention of Atrocities) Act could have been filed against him.

4. Having heard the learned advocates appearing for the parties and having perused the material on record, it is clear that entire complaint revolves around the alleged act of the applicants of having made derogatory remarks

against the women relatives of the complainant and thereby having committed offences punishable under Schedule Caste and Schedule Tribe(Prevention of Atrocities) Act. When admittedly the applicant no.2 himself belongs to Schedule Caste, he cannot be prosecuted for such offence. Insofar as applicant no.2 is concerned, the complainant is required to be and hereby quashed.

5. So far as applicant no.1 is concerned, it cannot be stated that even if the allegations contained in the complaint are taken on face value, they disclose no offence. At this stage, therefore, it is not possible to quash the complaint insofar as applicant no.1 is concerned. However, the defence of applicant no.1 shall be gone into by the competent Court at the time of trial or at the stage of discharge, if so preferred by the applicant

6. In view of the above, application is disposed of. Rule made absolute qua applicant no.2. Rule is discharged qua applicant no.1. Interim relief vacated.

(Akil Kureshi,J.)

(raghu)